

JULY, 2000
WEST VIRGINIA INFORMATIONAL LETTER
NO. 119-A

**TO: ALL INSURANCE COMPANIES LICENSED TO DO BUSINESS IN THE
STATE OF WEST VIRGINIA**

RE: ARBITRATION AND APPRAISAL PROVISIONS

The purpose of this informational letter is to replace the arbitration and appraisal language set forth in Informational Letter No. 119 with amended language, to extend the time frame for withdrawal of approval and to address questions which have arisen since publication of Informational Letter No. 119.

First, the West Virginia Insurance Commissioner has received numerous inquiries as to whether an insurer doing business in West Virginia must include arbitration and appraisal provisions in their insurance contracts as a result of Informational Letter No. 119. Arbitration and appraisal provisions need not be included in West Virginia insurance contracts. However, if the insurer chooses to include arbitration or appraisal provisions, or both in West Virginia insurance contracts, the language must be equivalent to the language contained in the provisions set forth below.

Second, Informational Letter No. 119 stated that the Insurance Commissioner would be withdrawing approval on September 1, 2000 of all arbitration and appraisal provisions previously approved which do not conform to the language set forth therein. However, many insurers have indicated that additional time is necessary to comply. Therefore, prior approval will not be withdrawn from previously approved arbitration and appraisal provisions until January 1, 2001.

Third, Informational Letter No. 119 required that filings must be received by July 31, 2000. The deadline for submission of filings has been extended to November 1, 2000.

Fourth, a few revisions have been made to the arbitration and appraisal provisions contained within Informational Letter No. 119. As such, if an insurer incorporates appraisal and/or arbitration provisions in its insurance contracts, the language contained therein must conform to the language set forth below.

Appraisal in a Commercial Contract of Insurance:

If we [the company] and you [the insured] disagree on the amount of loss, both parties may, by mutual consent, agree in writing to an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree upon an umpire, either may request that selection of an umpire be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire.

A decision agreed to by any two will be binding.

Each party will:

- a) Pay its chosen appraiser; and
- b) Bear the other expenses of the appraisal and umpire equally.

Once both parties agree to obtain an appraisal, we retain no right to deny the claim unless the loss resulted from your [the insured] intentional material misrepresentation and/or fraudulent conduct. In the event that the loss resulted from your [the insured's] intentional material misrepresentation and/or fraudulent conduct, we retain the right to deny the claim.

Appraisal in a Personal Contract of Insurance:

If we [the company] and you [the insured] disagree on the amount of loss, both parties may, by mutual consent, agree in writing to an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree upon an umpire, either may request that selection of an umpire be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If the appraisers fail to agree, they will submit their differences to the umpire.

A decision agreed to by any two will be binding.

Payment of the appraisal, the fees of the appraisers and the fee of the umpire shall be made by us if the decision meets or exceeds the last demand made by you [the insured]. If the decision is less than your [the insured's] last demand, each party will pay its chosen appraisers and bear the expense of the umpire equally.

Once both parties agree to obtain an appraisal, we retain no right to deny the claim unless the loss resulted from your [the insured's] intentional material misrepresentation and/or fraudulent conduct. In the event that the loss resulted from your [the insured's] intentional material misrepresentation and/or fraudulent conduct, we retain the right to deny the claim.

Arbitration in a Commercial Contract of Insurance:

If we [the company] and you [the insured] do not agree whether coverage is provided under this Policy of Insurance for a claim made by or against the insured, both parties may, by mutual consent, agree in writing to arbitration of the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator. The two arbitrators will select a third arbitrator. If they cannot agree within 30 days upon a third arbitrator, both parties must request that selection of a third arbitrator be made by a judge of a court having jurisdiction.

Unless both parties agree otherwise, arbitration will take place in the county in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply.

A decision agreed to by any two will be binding.

Each party will:

- a) Pay the expenses it incurs; and
- b) Bear the expenses of the third arbitrator equally.

Arbitration in a Personal Contract of Insurance:

If we [the company] and you [the insured] do not agree whether coverage is provided under this Policy of Insurance for a claim made by or against the insured, both parties may, by mutual consent, agree in writing to arbitration of the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator. The two arbitrators will select a third arbitrator. If they cannot agree upon the selection of a third arbitrator within 30 days, both parties must request that selection of a third arbitrator be made by a judge of a court having jurisdiction.

Unless both parties agree otherwise, arbitration will take place in the county in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply.

A decision agreed to by any two will be binding.

Payment of the arbitrators' fees shall be made by us if coverage is found to exist. If coverage is not found, each party will:

- a) Pay its chosen arbitrator; and
- b) Bear the other expenses of the third arbitrator equally.

Only those arbitration and appraisal provisions equivalent to the language set forth herein will be approved by the West Virginia Insurance Commission. Accordingly, all insurers doing business in West Virginia whose policies contain either arbitration or appraisal provisions, or both, which are not equivalent to the language set forth herein must submit a filing to the Rates and Forms Division by November 1, 2000 with arbitration or appraisal language, or both, which is equivalent to the language set forth within this informational letter. Pursuant to W. Va. Code § 33-6-9(f), the Commissioner is withdrawing previous approval of all arbitration and appraisal language which is not equivalent to the language set forth herein as of January 1, 2001.

Hanley C. Clark
Insurance Commissioner